

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4936 of 2010

ORDER :

This Revision is filed under Section 115 of C.P.C. challenging the order dt.19.06.2010 in E.A.No.9 of 2010 in E.P.No.2 of 2009 in O.S.No.252 of 2006 on the file of IV Additional Junior Civil Judge, Kadapa.

2. The petitioner herein is the Judgment-Debtor.
3. The respondents filed the above suit to declare his easementary right over the land shown in red colour in the plaint; to direct the petitioner to remove compound wall between the points 'B' to 'M' shown in the plaint plan of length of 63 ½ feet; and for relief of mandatory injunction for removal of the compound wall.
4. By decree dt.28.08.2006, the Court below decreed the suit. It held that respondents have a right of easement to the land shown in red colour in the plaint plan, and directed petitioner to remove the compound wall between points 'B' to 'M' of length of 63 ½ feet by way of mandatory injunction.
5. The said decree had attained finality and there was no challenge to the judgment in the suit by petitioner.
6. Thereafter, E.P.No.2 of 2009 was filed for

execution of the decree. On 16.11.2009, the court ordered the E.P. and directed removal of the wall from points 'B' to 'M', admeasuring 63 ½ feet. The Court Amin was entrusted with the execution of warrant for removal of the same. He inspected the E.P. schedule property and found, while measuring the property from points 'B' to 'M', that on the eastern side there is a wall from point 'B' stretching to 46'8" and from there over the remaining wall of 16'10", an R.C.C. room had been constructed. He returned the warrant stating that there was no direction in the order dt.16.11.2009 to remove the R.C.C. room.

7. In view of this report of the Court Amin, E.A.No.9 of 2010 was filed by respondents seeking a direction to the Court Amin to remove the R.C.C. room constructed over the wall of extent 16'10".

8. This application was opposed by petitioner contending that the decree is only for removal of the compound wall raised between points 'B' to 'M' of length 63 ½ feet; that there is no decree passed against petitioner for removal of the room along with up stair portion with specific width; that there is no declaratory decree in favour of respondents in respect of the R.C.C. building and therefore the decree is inexecutable. It was also contended that the executing court cannot go beyond the decree and the court cannot direct the Court Amin to demolish the R.C.C. room.

9. By order dt.19.06.2010, the Court below allowed the said E.A. It held that when there is an accretion in the property in dispute, it is unsustainable, that merely because there exists a building, the execution of the decree cannot be stopped making the decree ineffective; and that where property is in dispute, if any improvement is made to the said property, the party making the improvement takes a risk and if he ultimately loses in the suit, the accretion to the property would also go. It therefore granted permission to the Court Amin to remove the compound wall as per the warrant entrusted to him earlier, and also to demolish the R.C.C. room constructed over the disputed compound wall.

10. Challenging the same, the present Revision is filed.

11. Heard Sri S.D. Gowd, counsel for petitioner and Sri P. Vinayaka Swamy, counsel for respondent nos.1 and 2.

12. The counsel for petitioner contended that the Court below could not have directed removal of the R.C.C. room when there is no decree for that purpose; and that the Court below, being the executing court, had gone beyond the decree.

13. It is pertinent to note that in the counter-affidavit filed by petitioner in E.A.No.9 of 2010, no plea was raised

by petitioner that the R.C.C. room in question with first floor had been in existence long prior to the suit, and that intentionally the respondents have not sought any relief in respect thereto. In the absence of such a plea, it has to be presumed that the R.C.C. room in question with first floor came into existence pending suit. Therefore, its very accretion is *lis pendens*. Therefore, any such accretion, pending suit, would only be subject to the result of the suit.

14. Since admittedly, the suit had been decreed and the easementary right of respondents has been declared, to enforce such easementary right, there cannot be allowed to be any obstruction in the passage being claimed by respondents. Therefore, whether such obstruction is a compound wall or a structure, the executing court is bound to direct their removal in order to enforce the decree declaring the easementary rights of respondents. The petitioner, having taken a risk in making the accretion, pending suit, cannot seek to oppose the execution of decree by taking advantage of its own wrong.

15. While it is true that an executing court cannot go behind the decree and has to execute it as it stands, it is also settled law that the executing court has the right to construe the decree in the light of the applicable provisions of law. (See **C . F . Angadi v. Y.S. Hirannayya**^[1]).

16. The interpretation placed by the trial court, in my considered opinion, is consistent with the decree. It is not the case of the petitioner that the decree is a void *ab initio* or a nullity or that it has become inexecutable by reason of a law promulgated after its passing. Therefore, the court below is right in refusing to sustain the objections raised by petitioner.

17. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No order as to costs.

18. As a sequel, miscellaneous petitions pending, if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13.07.2015
Ndr/*

[\[1\]](#) AIR 1972 SC 239